



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 622***

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S622-ARBf-17 [v.3]

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Amends Title [NO]
First Edition

Date _____, 2019

Senator Tillman

1 moves to amend the bill on page 22, line 43 through page 28, line 12, by rewriting the lines to
2 read:

3 **"PART VI. FACILITATE CRITICAL INFRASTRUCTURE DISASTER RELIEF**

4 **SECTION 6.1.** Part 8 of Article 166A of the General Statutes is amended by adding
5 a new section to read:

6 **"§ 166A-19.70A. Facilitate critical infrastructure disaster relief.**

7 (a) Purpose. – The State finds that it is appropriate to exclude nonresident businesses and
8 nonresident employees who temporarily come to this State at the request of a critical
9 infrastructure company solely to perform disaster-related work during a disaster response period
10 from the following tax and regulatory requirements:

11 (1) Corporate and individual income tax, as provided under G.S. 105-130.1 and
12 G.S. 105-153.2.

13 (2) Franchise tax, as provided under G.S. 105-114.

14 (3) Unemployment tax, as provided under G.S. 96-1(b)(12).

15 (4) Workers' compensation, as provided under G.S. 97-13(e).

16 (5) Certificate of Authority from the Secretary of State to transact business in
17 this State, as provided under G.S. 55-15-01(d) and G.S. 57D-1-24(d).

18 (b) Definitions. – In addition to the definitions in G.S. 166A-19.3, the following
19 definitions apply in this section:

20 (1) Corporation. – Defined in G.S. 105-130.2.

21 (2) Critical infrastructure. – Property and equipment owned or used by a critical
22 infrastructure company for utility or communications transmission services
23 provided to the public in the State. Examples of critical infrastructure include
24 communications networks, electric generation, transmission and distribution
25 systems, natural gas transmission and distribution systems, water pipelines,
26 and related support facilities. Related support facilities may include buildings,
27 offices, lines, poles, pipes, structures, and equipment.

28 (3) Critical infrastructure company. – One of the following:

29 a. A registered public communications provider.

30 b. A registered public utility.

31 (4) Disaster-related work. – Repairing, renovating, installing, building, or
32 performing services on critical infrastructure that has been damaged,



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- 1 impaired, or destroyed as a result of a disaster or emergency in an area covered
2 by the disaster declaration.
- 3 (5) Disaster response period. – A period that begins ten days prior to the first day
4 of a disaster declaration and expires on the earlier of the following:
5 a. Sixty (60) days following the expiration of the disaster declaration, as
6 provided under G.S. 166A-19.21(c).
7 b. One hundred eighty (180) days following the issuance of the disaster
8 declaration.
- 9 (6) Employee. – Defined in G.S. 105-163.1.
- 10 (7) Nonresident business. – An entity that has not been required to file an income
11 or franchise tax return with the State for three years prior to the disaster
12 response period, other than those arising from the performance of
13 disaster-related work during a tax year prior to the enactment of this section,
14 and that meets one or more of the following conditions:
15 a. Is a nonresident entity.
16 b. Is a nonresident individual who owns an unincorporated business as a
17 sole proprietor.
- 18 (8) Nonresident employee. – A nonresident individual who is one of the
19 following:
20 a. An employee of a nonresident business.
21 b. An employee of a critical infrastructure company who is temporarily
22 in this State to perform disaster-related work during a disaster response
23 period.
- 24 (9) Nonresident entity. – Defined in G.S. 105-163.1
- 25 (10) Nonresident individual. – Defined in G.S. 105-153.3.
- 26 (11) Registered public communications provider. – A corporation doing business
27 in this State prior to the disaster declaration that provides the transmission to
28 the public of one or more of the following:
29 a. Broadband.
30 b. Mobile telecommunications.
31 c. Telecommunications.
32 d. Wireless internet access
- 33 (12) Registered public utility. – A corporation doing business in this State prior to
34 the disaster declaration that is subject to the control of one or more of the
35 following entities:
36 a. North Carolina Utilities Commission.
37 b. North Carolina Rural Electrification Authority.
38 c. Federal Communications Commission.
39 d. Federal Energy Regulatory Commission.
- 40 (c) Critical Infrastructure Company Notification. – A critical infrastructure company
41 must provide notification to the Department of Revenue within 90 days of the expiration of the
42 disaster response period. The notification must be in the form and manner required by the
43 Department. The notification must include the following:

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1 (1) A list of all nonresident businesses who performed disaster-related work in
2 this State during a disaster response period at the request of the critical
3 infrastructure company.

4 (2) A list of nonresident employees who performed disaster-related work in this
5 State for the critical infrastructure company during a disaster response period.
6 The notification must include the amount of compensation paid to the
7 nonresident employee performing disaster-related work in this State.

8 (d) Nonresident Business Notification. – A nonresident business must provide
9 notification to the Department of Revenue within 90 days of the date the nonresident business
10 concludes its disaster-related work in the State. The notification must be in the form and manner
11 required by the Department. The notification must include a list of nonresident employees who
12 performed disaster-related work in this State during a disaster response period, along with the
13 amount of compensation paid to the nonresident employee performing disaster-related work in
14 this State.

15 (e) Limitation. – The intent of this section is to provide relief to nonresident businesses
16 and nonresident employees who would not otherwise be subject to this State's tax and
17 regulatory requirements if they had not performed disaster-related work during the disaster
18 response period. The relief provided under this section does not apply to any tax year that is
19 part of the disaster response period if the nonresident business or nonresident employee
20 continues to perform disaster-related work following the end of the disaster response period.
21 The relief provided under this section does not apply to a tax year that is part of the disaster
22 response period if the nonresident business nonresident employee is required to file an income
23 tax return for that tax year with the Department of Revenue for reasons other than the
24 performance of disaster-related work."

25 **SECTION 6.2.(a)** G.S. 55-15-01 is amended by adding a new subsection to read:

26 "(d) The following foreign corporations are not required to obtain a certificate of authority
27 from the Secretary of State:

28 (1) A nonresident business solely performing disaster-related work in this State
29 during a disaster response period at the request of a critical infrastructure
30 company. The definitions and provisions of G.S. 166A-19.70A apply to this
31 subdivision.

32 (2) A person issued a temporary license by the Department of Revenue under
33 G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this
34 State in response to a disaster declaration."

35 **SECTION 6.2.(b)** G.S. 57D-1-24 is amended by adding a new subsection to read:
36 "**§ 57D-1-24. Certificate of existence; certificate of authorization.**

37 ...

38 (d) A nonresident business solely performing disaster-related work in this State
39 during a disaster response period at the request of a critical infrastructure
40 company is not required to obtain a certificate of authority from the Secretary
41 of State. The definitions and provisions of G.S. 166A-19.70A apply to this
42 subdivision."

43 **SECTION 6.3.** G.S. 96-1(b)(12) reads as rewritten:

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"(b) Definitions. – The following definitions apply in this Chapter:

...

(12) Employment. – Defined in section 3306 of the Code, with the following additions and exclusions:

...

b. Exclusions. – The term excludes all of the following:

...

5. Service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this exclusion."

SECTION 6.4. G.S. 97-13 is amended by adding a new subsection to read:

"§ 97-13. Exceptions from provisions of Article.

...

(e) Critical Infrastructure Disaster Relief. – This Article shall not apply to nonresident employees of a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

SECTION 6.5. G.S. 105-114 is amended by adding a new subsection to read:

"(d) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State for purposes of this Article. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

SECTION 6.6.(a) G.S. 105-130.1 reads as rewritten:

"§ 105-130.1. Purpose.

(a) Purpose. – The general purpose of this Part is to impose a tax for the use of the State government upon the net income of every domestic corporation and of every foreign corporation doing business in this State.

The tax imposed upon the net income of corporations in this Part is in addition to all other taxes imposed under this Subchapter.

(b) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State for purposes of this Part. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

SECTION 6.6.(b) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(30) Payments made to an affiliate or subsidiary that is not subject to tax under this Article pursuant to the exceptions for critical infrastructure disaster relief provided under G.S. 166A-19.70A, to the extent the payments are deducted in

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determining federal taxable income. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision."

SECTION 6.7.(a) G.S. 105-131.7 is amended by adding a new subsection to read:

"§ 105-131.7. Returns; shareholder agreements; mandatory withholding.

...

(f) Critical Infrastructure Disaster Relief. – An S Corporation that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file a return with the Department. However, the corporation must furnish to each shareholder who would be entitled to share in the corporation income any information necessary for that person to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A concerning disaster-related work apply to this subsection."

SECTION 6.7.(b) G.S. 105-154(c) reads as rewritten:

"§ 105-154. Information at the source returns.

...

(c) Information Returns of Partnerships. – A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, each partner's distributive share of the partnership's income, and the adjustments required by this Part. A partner's distributive share of partnership net income includes any guaranteed payments made to the partner. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall be signed by one of the partners under affirmation in the form required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

A partnership that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file an information return with the Secretary. However, the partnership must furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A apply to this paragraph."

SECTION 6.8.(a) G.S. 105-153.2 reads as rewritten:

"§ 105-153.2. Purpose.

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

(1) Of every resident of this State.

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- (2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State, deriving income from a business, trade, profession, or occupation carried on in this State, or deriving income from gambling activities in this State. This subdivision does not apply to a nonresident business or a nonresident employee who solely derives income from North Carolina sources attributable to a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company; the definitions and provisions in G.S. 166A-19.70A apply to this subdivision."

SECTION 6.8.(b) G.S. 105-153.8(a)(2) reads as rewritten:

"(a) Who Must File. – The following individuals must file with the Secretary an income tax return under affirmation:

- (1) Every resident who for the taxable year has gross income under the Code that exceeds the standard deduction amount provided in G.S. 105-153.5(a)(1).
- (2) Every nonresident individual who meets all of the following requirements:
 - a. Receives during the taxable year gross income that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State. This sub-subdivision does not apply to a nonresident business or a nonresident employee who solely derives income from North Carolina sources attributable to a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company; the definitions and provisions in G.S. 166A-19.70A apply to this sub-subdivision.
 - b. Has gross income under the Code that exceeds the applicable standard deduction amount provided in G.S. 105-153.5(a)(1).
- (3) Any individual whom the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return."

SECTION 6.9.(a) G.S. 105-163.1(13) reads as rewritten:

"§ 105-163.1. Definitions.

The following definitions apply in this Article:

- ...
- (13) Wages. – The term has the same meaning as in section 3401 of the ~~Code~~ Code, except the term does not include amounts paid to a nonresident employee for a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision.

..."

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1 **SECTION 6.9.(b)** G.S. 105-163.3(b) is amended by adding a new subdivision to
2 read:

3 "(b) Exemptions. – The withholding requirement does not apply to the following:

4 ...

5 (5) Compensation paid by a nonresident business or a critical infrastructure
6 company to an ITIN contractor who is a nonresident individual for a business,
7 trade, profession, or occupation carried on in this State to perform
8 disaster-related work during a disaster response period at the request of a
9 critical infrastructure company. The definitions and provisions of
10 G.S. 166A-19.70A apply to this subdivision."

11 **SECTION 6.9.(c)** G.S. 105-163.7(b) reads as rewritten:

12 "(b) Informational Return to Secretary. – Every employer shall annually file an
13 informational return with the Secretary that contains the information given on each of the
14 employer's written statements to an employee. The Secretary may require additional information
15 to be included on the informational return, provided the Secretary has given a minimum of 90
16 days' notice of the additional information required. The informational return is due on or before
17 January 31 of the succeeding year and must be filed in an electronic format as prescribed by the
18 Secretary. If the employer terminates its business or permanently ceases paying wages during the
19 calendar year, the informational return must be filed within 30 days of the last payment of
20 remuneration. The informational return required by this subsection is in lieu of the report required
21 by G.S. 105-154.

22 An employer that is not doing business in this State because it is a nonresident business
23 performing disaster-related work during a disaster response period at the request of a critical
24 infrastructure company is not required to file an information return with the Secretary. However,
25 the employer must furnish to an employee, upon request, any information necessary for that
26 person to properly file a State income tax return. The definitions and provisions in
27 G.S. 166A-19.70A apply to this paragraph."

28 **SECTION 6.10.** Part 2 of Article 36B of Chapter 105 of the General Statutes is
29 amended by adding a new section to read:

30 "**§ 105-449.69A. Temporary license during disaster response period.**

31 (a) Temporary License. – The Secretary may grant a temporary license to an applicant to
32 import, export, distribute, or transport motor fuel in this State in response to a disaster declaration.
33 The term "disaster declaration" has the same meaning as defined in G.S. 166A-19.3. The
34 temporary license expires upon the expiration of the disaster declaration. A temporary license
35 issued under this section may not be renewed or a new temporary license granted if the licensee
36 failed to file the required returns or make payments of the required taxes.

37 (b) Requirements. – To obtain a temporary license, a person must file an application with
38 the Secretary on a form prescribed by the Secretary within seven calendar days from the date of
39 the disaster declaration. An application must include all of the following information:

40 (1) The legal name of the business and the trade name, if applicable, under which
41 the person will transact business within the State.

42 (2) The federal identification number of the business or, if such number is
43 unavailable, the social security number of the owner.

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- 1 (3) The location, with a street number address, of the principal office or place of
2 business and the location where records will be made available for inspection.
3 (4) Any other information required by the Secretary.
4 (c) Exceptions. – The Secretary may issue a temporary license under this section as an
5 importer, exporter, distributor, or transporter without requiring the applicant to file with the
6 Secretary a bond or an irrevocable letter of credit, as otherwise required by G.S. 105-449.72, and
7 without requiring the applicant to be authorized to transact business in this State with the
8 Secretary of State."
9 **SECTION 6.11.** This Part is effective when it becomes law and applies to disasters
10 declarations on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____